

IN THE CIRCUIT COURT FOR BREVARD COUNTY, FLORIDA

IN RE: ESTATE OF

PROBATE DIVISION

SEYMOUR BAUM,

File No. 05-2012-CP 048323

Deceased.

_____ /

HONORABLE JOHN M. HARRIS

ANNEEN NINA GLORIA BAUM,

As daughter and heir at law,

Petitioner,

vs.

DAVID A. BAUM, Personal Representative, et al.

Respondents.

_____ /

**PETITIONER'S MOTION TO STRIKE PERSONAL REPRESENTATIVE'S
RESPONSE TO PETITIONER'S MOTION FOR RELIEF
FROM COURT ORDERS**

Petitioner, ANNEEN NINA GLORIA BAUM, (hereinafter "Petitioner"), by and through her undersigned counsel, hereby files this Motion to Strike the Personal Representative's Response to Petitioner's Motion for Relief from this Court's November 15, 2013 and April 2, 2014 Orders, and as grounds state as follows:

1. Rule 1.540(b) of the Florida Rules of Civil Procedure provides five (5) grounds for seeking relief from a court order: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the order is void; or (5) the order has been vacated, or is no longer equitable. *See* Fla. R. Civ. P. 1.540(b)(1)-(b)(3).
2. The Petitioner's Motion for Relief from Judgment sought relief from the November 15, 2013 and April 2, 2014 Orders based on the Personal Representative and his counsel's misrepresentation and misconduct (i.e., the third ground for relief) which was made clear by the following:

LAW OFFICE OF HOFFMAN & HOFFMAN, P.A.

848 Brickell Avenue, Suite 810, Miami, Florida 33131 ~ Telephone: 305.372.2877 Fax: 305.372.2875

- a. The Petitioner's motion is entitled "Petitioner's Motion for Relief from Court Orders due to Respondent's *Misrepresentation and Misconduct*";
 - b. Paragraph 4 of the motion states that "Fla. R. Civ. P. 1.540(b)(3) provides that a court may relieve a party from an order due to misrepresentation or misconduct of an adverse party"; and
 - c. The heading above paragraph six of the motion states that "Petitioner is entitled to relief from the November 15, 2013 Orders pursuant to Fla. R. Civ. P. 1.540(b)(3)."
3. Even though it is abundantly clear that the Petitioner's Motion for Relief was based on the Personal Representative and his counsel's misconduct and misrepresentation to this Court under Fla. R. Civ. P. 1.540(b)(3) (i.e., the third ground for relief), the Personal Representative has attempted to lead this Court to believe that the Petitioner's motion was based on "newly discovered evidence" under Fla. R. Civ. P. 1.540(b)(2) (i.e., the second ground for relief). (See Personal Representative's Response at ¶ 3).
 4. The Personal Representative's Response purports to quote the Petitioner's motion seeking relief for, using the words in quotations, "newly discovered evidence". (See Personal Representative's Response at ¶ 3). This is blatantly incorrect. The Petitioner's motion and requested relief is based on the "misconduct" and "misrepresentation" of Respondent and his counsel, relief this court may Order under Fla. R. Civ. P. 1.540(b)(3).
 5. The Personal Representative's Response never refutes the Personal Representative's misconduct and misrepresentation regarding his intentional active avoidance of service attempted on 15 separate occasions as was detailed in the Motion of Petitioner.
 6. Instead, the Personal Representative's Response cites case law that is inapplicable to the relief requested, by solely addressing Fla. R. Civ. P. 1.540(b)(2), in further

misrepresentation to this Court.¹

7. The Personal Representative's Response also alleges that his counsel and this Court were never notified that there was a problem with service at any time before or after the hearing. This is also incorrect. At the December 17, 2013 hearing Mark Guralnick informed this Court and the Personal Representative's counsel as well as all who were present at the December 17, 2013 hearing of the problems that he was having in serving the summonses for this case. This issue was not raised again at the March 18, 2014 hearing because the Petitioner had already formally served all interested parties with the Second Amended Petition for Revocation of Probate prior to the hearing.
8. The Personal Representative's Response, and all of the case law cited therein, should be stricken from the Court Record as erroneous. Such Response should not be considered by this Court as it does not address the basis of Petitioner's Motion for Relief [misrepresentation/misconduct]— Fla. R. Civ. P. 1.540(b)(3) and in and of itself is a further misrepresentation to this Court by Respondent.

WHEREFORE, the Petitioner respectfully requests this Court to enter an Order striking Respondent's response as a further misrepresentation to this court; and grant Petitioner's Motion for Relief from the November 15, 2013, and April 2, 2014 Orders in accordance with Fla. R. Civ. P. 1.540(b)(3), and for any other relief this Court deems just.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of this document was served via the E-Filing Portal and/or US Mail on May 5, 2014 to:

David A. Baum, c/o William T. Hennessey, Esq., Gunster, Yoakley & Stewart, P.A.,
777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401
(whennessey@gunster.com; dcarr@gunster.com; eservice@gunster.com)

¹ The Personal Representative also cites *Freemon v. Deutsche Bank Trust Company Americas*, 46 So.3d 1202,1204 for the proposition that "If the motion for relief from judgment 'does not set forth a basis for relief on its face, then an evidentiary hearing is unnecessary, the time and expense of needed litigation is avoided, and the policy of preserving the finality of judgment is enhance.'" This case is irrelevant for purposes of the Petitioner's Motion for Relief from Judgment because the Petitioner's Motion did set forth a basis for relief pursuant to Fla. R. Civ. P. 1.540(b)(3).

Bruce M. Baum, the biological son and heir at law; 155 West 71st Street, Apartment 5E,
New York, NY 10023

The Women's Zionist Organization of America, Inc., aka Hadassah, c/o William E. Boyes, Esq., 3300 PGA Boulevard, Suite 600, Palm Beach Gardens, FL 33410
(bboyes@boyesandfarina.com; asabocik@boyesandfarina.com;
czill@boyesandfarina.com)

Chabad Trustees under the Chabad Trust, c/o David H. Jacoby, Esq., 2111 Dairy
Road, Melbourne, FL 32904 (davidhjacoby@yahoo.com)

Friends Of Israel Defense Forces, Inc c/o Jonathan Bernstein, 1430 Broadway, Suite 1301, New York, NY 10018; (jonathan.bernstein@fidf.org)

Respectfully Submitted,

LAW OFFICES OF HOFFMAN & HOFFMAN, P.A.
848 Brickell Avenue, Suite 810, Miami, Florida 33131
Telephone: 305.372.2877 / Facsimile: 305.372.2875
EService E-mail: eservice@hoffmanpa.com

By: /s/Teresa Abood Hoffman, Esq.
Teresa Abood Hoffman, Esq., LLME
Florida Bar No. 871982
E-mail: teresa@hoffmanpa.com

Wayne Alder, Esq.
Becker & Poliakoff, P.A.
Bank of America Centre
625 North Flagler Drive, 7th Floor
West Palm Beach, FL 33401
(561) 820-2862/Fax (561) 832-8987

Attorney for Anneen Nina Gloria Baum